

Introduced by Senator Migden

February 23, 2006

An act to add Section 6485.2 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as amended, Migden. Sales and use tax fraud.

The Sales and Use Tax Law imposes penalties for failure to file returns and for failure to remit the total taxes owed.

This bill would provide that any person who knowingly collected sales tax reimbursement or use tax, and who fails to timely remit that sales tax reimbursement or use tax to the State Board of Equalization, is liable for a penalty of 50% of the amount not timely remitted, except under certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6485.2 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6485.2. (a) (1) Any person who knowingly collects sales tax
- 4 reimbursement, as defined in Section 1656.1 of the Civil Code,
- 5 or who knowingly collects use tax pursuant to Chapter 3
- 6 (commencing with Section 6201), and who fails to timely remit
- 7 that sales reimbursement or use tax to the board, shall be liable
- 8 for a penalty of 50 percent of the amount not timely remitted.

1 (2) This subdivision shall not apply to either of the following:

2 (A) Any person whose liability for the unremitted sales tax
3 reimbursement or use tax described in paragraph (1) averages
4 one thousand dollars (\$1,000) or less per month or does not
5 exceed 5 percent of the total amount of tax liability for which the
6 tax reimbursement was collected for the period in which tax was
7 due, whichever is greater.

8 (B) If a person’s failure to make a timely remittance of sales
9 tax reimbursement or use tax is due to a reasonable cause or
10 circumstances beyond the person’s control, and occurred
11 notwithstanding the exercise of ordinary care and the absence of
12 willful neglect, the person shall be relieved of the penalty
13 imposed by this subdivision.

14 ~~(b) For purposes of this section, “reasonable cause or~~
15 ~~circumstances beyond the person’s control” includes, but is not~~
16 ~~limited to, any of the following:~~

17 (b) For purposes of this section:

18 (1) “Reasonable cause or circumstances beyond the person’s
19 control” includes, but is not limited to, any of the following:

20 ~~(1)~~

21 (A) The occurrence of a death or serious illness of the person
22 or the person’s next of kin that caused the person’s failure to
23 make a timely remittance.

24 ~~(2)~~

25 (B) The occurrence of an emergency, as defined in Section
26 8558 of the Government Code that caused the person’s failure to
27 make a timely remittance.

28 ~~(3)~~

29 (C) A natural disaster or other catastrophe directly affecting
30 the business operations of the person that caused the person’s
31 failure to make a timely remittance.

32 ~~(4)~~

33 (D) The board failed to send returns or other information to
34 the correct address of record, that caused the person’s failure to
35 make a timely remittance.

36 ~~(5)~~

37 (E) The person’s failure to make a timely remittance occurred
38 only once over a three-year period, or once during the period in
39 which the person was engaged in business, whichever time
40 period is shorter.

1 ~~(6)~~

2 (F) The person voluntarily corrected errors in remitting sales
3 tax reimbursement or use tax collected that were made in
4 previous reporting periods and remitted payment of the liability
5 owed as a result of those errors during the period or periods in
6 which the errors occurred prior to being contacted by the board
7 regarding possible errors or discrepancies.

8 (2) *“Sales tax reimbursement” shall also include any sales tax*
9 *that is advertised, held out, or stated to the public or to any*
10 *customer, directly or indirectly, that the tax or any part thereof*
11 *will be assumed or absorbed by the retailer.*

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